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7 **UNITED STATES DISTRICT COURT**
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DISTRICT OF NEVADA

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ARIEL MARISCAL, a minor,)
by and through his mother)
and guardian, IRMA MARISCAL,)
Plaintiff,)
vs.)
RYAN SIMPSON, in his individual)
and official capacity, and the)
CITY OF SPARKS,)
Defendants.)

Case No. 3:08-cv-00162 BES-RAM

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

Jeffrey S. Blanck ("Plaintiff's Counsel"), individually and as legal counsel for Plaintiff Ariel Mariscal, a minor, by and through his mother and guardian Irma Mariscal, (hereafter referred to as "Mariscal"), and Defendant Ryan Simpson, (hereafter referred to as "Simpson"), by and through his counsel of record, Lemons, Grundy & Eisenberg ("Simpson's Counsel"), hereby enter into the following STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER:

WHEREAS, Mariscal has filed the above styled and numbered suit against Simpson and City of Sparks; and

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1 WHEREAS, documents and other tangible and intangible information which may be
2 relevant to the subject lawsuit pertain to an active law enforcement officer (Simpson) and are
3 thereby confidential and may be subject to privileges from discovery; and

4 WHEREAS, documents and other tangible information which may be relevant to this
5 lawsuit pertain to sensitive educational and medical information regarding Ariel Mariscal, a
6 minor; and

7 WHEREAS, the parties and their counsel desire to expedite and facilitate the discovery
8 process in this litigation while protecting the interests of both parties; and

9 WHEREAS, all counsel agree that the easiest and most economical way to accomplish
10 this goal is through the execution of a Stipulated Confidentiality Agreement and Protective
11 Order;

12 **THEREFORE, SUBJECT TO THE APPROVAL OF THIS COURT,** the parties
13 hereby stipulate as follows:

14 1. Documents and information that will be produced by Mariscal and Simpson
15 pursuant to this STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE
16 ORDER are claimed to be of a confidential nature. The purpose of this Confidentiality
17 Agreement and Protective Order is to protect the confidentiality of these documents in the
18 interest of the parties' privacy and Simpson's safety due to his status as an active law
19 enforcement officer.

20 2. Confidential documents and information produced in this case shall be protected
21 from inappropriate and/or inadvertent disclosure in accordance with the following terms and
22 conditions:

23 a. Simpson may, in good faith, designate documents or discovery
24 information as "CONFIDENTIAL" including by way of example, but not
25 limited to records pertaining to internal affairs investigations, records
26 which identify Simpson's residential information and/or information that
27 identifies his family members, his health information and similar private
28 and confidential information.

- c. A person retained by a party or its attorneys of record to assist in this action, such as independent accountants, expert witnesses, statisticians, economists, consultants or other technical experts and/or consultants, who have signed a declaration in the form of **Exhibit "A"** hereto, which signed declaration shall be retained by such party or its attorneys; and/or
 - d. Court officials involved in these actions, including the court and its staff, court reporters, persons operating video recording equipment at depositions, and any person appointed by the court; and/or
 - e. Actual or potential deposition witnesses in this action who are assisting counsel in the prosecution or defense of this action or whom counsel must advise concerning the status of this action who has executed a declaration in the form attached hereto as **Exhibit "A."**

The parties expressly agree that the confidential information as identified in Paragraph 2, above, will be maintained in a location to prevent inadvertent disclosure to anyone not deemed to be a “qualified person” as identified in paragraph 3, above.

4. In the event that a "qualified person" ceases to engage in the preparation for trial or trial of this proceeding, access by such person to confidential documents and other discovery materials shall be terminated; however, the provisions of this Confidential Agreement and Protective Order shall remain in full force and effect as to all persons who have obtained access to such documents or other discovery materials of plaintiff or Simpson designated for protection hereunder in perpetuity.

5. Counsel for the parties shall maintain a list of the names of all persons, including all experts, expected to testify at trial, who inspect or view confidential documents and other discovery information or who receive any copies of such confidential documents or discovery information and shall make such a list available to each other at the conclusion of this litigation.

6. Nothing contained herein shall prevent disclosure beyond the terms of this Confidentiality Agreement and Protective Order if the parties consent in writing to such disclosure; or if the court, after notice to all affected persons, allows such disclosure; or if the

1 party to whom confidential information has been produced thereafter becomes obligated to
 2 disclose the information in response to a lawful subpoena, PROVIDED THAT the subpoenaed
 3 party gives prompt written notice to counsel for the parties and permits said counsel sufficient
 4 time to intervene and seek appropriate relief in the action in which the subpoena was issued.

5 7. If any party submits and/or files with the court any document or other discovery
 6 information covered by this Confidentiality Agreement and Protective Order, efforts will first
 7 be made to obtain leave of court to file such document under seal. To that end, no party shall
 8 file or submit for filing as part of the court record any document under seal without first
 9 obtaining leave of court. Notwithstanding the agreement between the parties hereto, the party
 10 seeking to file a paper under seal bears the burden of overcoming the presumption in favor of
 11 public access to papers filed in court. If leave of court to file under seal is granted, the party
 12 filing any motion, brief or other paper containing or otherwise exhibiting any confidential
 13 information will be filed in sealed envelopes or other appropriate sealed containers, as permitted
 14 by the court's rules, bearing the words "CONFIDENTIAL" or "FILED UNDER SEAL."

15 8. Any person to whom delivery, exhibition, or disclosure of any confidential
 16 documents or confidential information described herein is made shall be subject to this order.

17 9. In the event that any confidential material is inadvertently used, it shall not lose
 18 its confidential status through such use, and the parties shall take all steps reasonably required
 19 to protect its confidentiality during and after its use. Any waiver of the terms of this order must
 20 be in writing.

21 10. When not in use as permitted by the provisions of this order, the documents
 22 designated herein shall be kept in a safe place at the offices of each parties' attorneys of record.

23 11. Within sixty (60) days after the final judgment in or settlement of this action, each
 24 party shall assemble all originals or reproductions, summaries, notes, whether handwritten or
 25 printed electronically of any documents or other discovery information stamped
 26 "CONFIDENTIAL" produced by the parties (excluding any documents that have been filed with
 27 the Court), shall be returned to opposing counsel. Insofar as the provisions of this
 28 Confidentiality Agreement and Protective Order restrict the use of the documents or other

1 discovery materials produced hereunder, such Confidentiality Agreement and Protective Order
 2 shall continue to be binding after the conclusion of this case.

3 12. Nothing in this Stipulated Confidentiality Agreement and Protective Order, nor
 4 any action taken in compliance with it, shall:

- 5 a. Operate as an admission by either party that any particular document, or
 6 discovery material, deposition transcript, or discovery response is or is not
 7 confidential; or
- 8 b. Prejudice in any way the right of any party to seek a determination by the
 9 Court whether particular documents or other information should or should
 10 not be disclosed or if disclosed whether it should remain subject to the
 11 terms of this Confidentiality Agreement and Protective Order.

12 13. Nothing in this Confidentiality Agreement and Protective Order shall be deemed
 13 to impair a party's right to object to the production of documents or information on any ground,
 14 or to assert that the documents or information sought are privileged or otherwise protected from
 15 disclosure or to demand more stringent restrictions for the treatment or disclosure of any
 16 documents or discovery information on any ground that may be warranted by the circumstances
 17 of a particular document request.

18 14. Nothing in this Confidentiality Agreement and Protective Order shall bar or
 19 otherwise restrict any attorney herein from rendering advice to his client with respect to this
 20 case.

21 15. The parties and their attorneys, and any "qualified persons" who receive
 22 confidential information subject to this Confidentiality Agreement and Protective Order, who
 23 intentionally, knowingly, or otherwise violate the terms of this Confidentiality Agreement and
 24 Protective Order shall be jointly and severally liable for all damages arising therefrom and said
 25 party may pursue any and all civil remedies available to it for breach of the terms of this
 26 Confidentiality Agreement and Protective Order.

27 16. This Confidentiality Agreement and Protective Order may be modified by written
 28 stipulation among all parties, approved by the Court or by application by noticed motion.

1 17. Nothing in this Confidentiality Agreement and Protective Order shall be construed
2 as a waiver of any rights by any party with respect to matters not specifically provided for
3 herein. This Confidentiality Agreement and Protective Order shall be applicable to documents
4 and discovery materials produced.

5 18. The parties agree that, for purposes of laying an evidentiary foundation for
6 authentication only, that the records are deemed properly authenticated unless, for good cause
7 shown, any party applies to the court for an order with a good faith factual basis to contest the
8 authenticity of any particular document or documents. Further, this stipulation shall not be
9 construed as a waiver of any other objection to such document, including, but not limited to,
10 relevance, hearsay, cumulativeness or undue prejudice.

11 Dated this 15 day of January, 2009.

12 
13 Jeffrey S. Blanck
14 JEFFREY S. BLANCK, #3913
15 485 West Fifth Street
16 Reno, NV 89503
17 **Attorney for Plaintiff**

18 Dated this 15 day of January, 2009.

19 
20 Alice Campos Mercado
21 ALICE CAMPOS MERCADO, #4555
22 Lemons, Grundy & Eisenberg
23 6005 Plumas Street, Suite 300
24 Reno, NV 89519
25 **Attorney for Defendant Ryan Simpson**

26 **ORDER**

27 IT IS SO ORDERED.

28 DATED this 16th day of January, 2009.


29 U.S. MAGISTRATE JUDGE

Exhibit A

Exhibit A

Exhibit A

**ACKNOWLEDGMENT AND AGREEMENT TO
ABIDE BY CONFIDENTIALITY AND PROTECTIVE ORDER**

THE UNDERSIGNED HEREBY UNDERSTANDS AND ACKNOWLEDGES that he/she has read the STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER signed by Jeffrey S. Blanck, Alice Campos Mercado of Lemons, Grundy & Eisenberg, counsel of record for Ryan Simpson, on the _____ day of _____, 2009.

The undersigned agrees to be bound by the terms of the above-mentioned CONFIDENTIALITY AGREEMENT and this Protective Order in the same manner as the parties and their respective attorneys of record, are bound. The undersigned agrees to provide counsel for the parties with written notice of any document sharing as well as a list of any recipients of shared documents. The undersigned also agrees, as provided in the STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER, to submit to the jurisdiction of the United States District Court for the District of Nevada and/or the Second Judicial District Court in and for the County of Washoe, State of Nevada for any proceedings related to any violation or threatened violation of this Order.

Dated:

SUBSCRIBED and SWORN to before

NOTARY PUBLIC